In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 666

JAMES SINGLETON, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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MEMORANDUM FOR THE UNITED STATES

Petitioner was adjudged in contempt for refusing to answer certain questions propounded to him before a grand jury for the Eastern District of Pennsylvania which had undertaken "an inquiry concerning frauds upon and conspiracies to defraud the Government of the United States, involving violations of the customs, narcotics, and internal revenue liquor laws of the United States, as well as violations of the White Slave Traffic

Act, perjury, bribery, and other criminal laws of the United States, and conspiracy to commit all such offenses" (R. 4, 6, 84, 192).

The questions petitioner refused to answer are as follows:

(1) as to George Pasquale, whom petitioner admitted he had known for twelve years (R. 88), the question, "What does he do? What business is he in?"; (2) as to Joe Pasquale, whom petitioner admitted that he had also known for twelve years (R. 89), the question, "All right. Now what business is he in?"; and (3) as to Marty Singleton, who was petitioner's nephew and who lived at the same address as petitioner (R. 93, 89), "What business is he in?" (R. 85-90, 193-194).

Petitioner's claim, essentially similar as to all three questions, was as follows (R. 92):[1]

> I decline to answer this question for the reason that I know—the reason that I know my answer would tend to incriminate me violating federal criminal statute, and * * * also under the laws of the Commonwealth of Pennsylvania. My refusing to answer this question as well as other questions which I refuse to answer is also based—based upon the additional grounds that these questions have nothing to do with the matter within the jurisdiction of this federal Grand Jury and is

[1] This is actually his objection to the second question.

> not relevant to the inquiry which may properly be conducted by it. I am supported by the knowledge that answering these questions would incriminate me by the advice I have received from my attorney, Mr. Schofield.

At the trial in support of his claim of privilege, petitioner called as a witness Max H. Goldschein, a Special Assistant to the Attorney General who had been assigned to aid the grand jury (R. 158, 159). Goldschein testified that he had a "file" on petitioner (R. 160), but that he had no separate file on Martin Singleton (R. 160), George Pasquale (R. 160-161), or Joseph Pasquale (R. 161), and that the only information on these three men that he had in petitioner's file was statements that the three others had been seen with petitioner (R. 162-163).

Further examination of the witness, Goldschein, showed the following (R. 172-173):

> Q. Mr. Goldschein, do you have any reason to believe that Mr. James Singleton could answer any or all of these three questions without incriminating himself under some law, either state or federal?
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> * * * * * * * *
>
> A. I don't know whether Mr. Singleton can answer the question or not. I don't know

where else the information can be obtained. I have no knowledge of Mr. Singleton's business. I have no knowledge of Mr. Pasquale, either one of the Pasquales' business, nor do I have any knowledge of the business of Marty Singleton. I have read statements in the newspaper and have heard similar, read similar statements.

Q. Now, will you answer me the same as to any knowledge that you have as to any connection or any business connection between those three individuals and James Singleton?

A. I have no knowledge of any business connection between Singleton and those three mentioned other than what are unconfirmed reports. * * * Statements made to me by various and sundry people whom I can't identify and don't know.

In addition, petitioner's police record showed that he had been arrested at least 16 times since 1928, most frequently for lottery laws violations, and once for violating the Pennsylvania liquor control act.[2]

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[2] Petitioner's police record was a part of the Government's file on petitioner. He subpoenaed this file and questioned the witness Goldschein, about it but the latter refused to turn it over to petitioner. Instead, Goldschein offered the file in evidence for the limited purpose of having the court examine it and determine whether anything in it would have helped the witness establish the danger of incrimination. The court

The District Court held that petitioner was not justified in refusing to answer and its judgment was affirmed by the Court of Appeals (R. 210-217), 193 F. 2d 464.

The law on the issue here involved was recently restated by this Court in *Hoffman* v. *United States,* 341 U.S. 479. In the current term, these principles were applied to another set of facts in *Greenberg* v. *United States,* O.T. 1951, No. 461, decided April 7, 1952.

The court below attempted to apply the law as found by this Court to the particular facts of the present case. It found the case "a long step removed" from *Hoffman* and *Greenberg* (R. 213), and concluded that the disclosure of the occupations of the three persons named could not, under the circumstances of the case, incriminate the petitioner. We submit that the analysis of the court below is correct, that no new question of law is involved, and that the petition should be denied.

However, whether or not the court below was correct in its application of the law to the particular facts of this case, it is clear that no question of law not fully briefed and argued in *Hoffman* and *Greenberg* is involved. The facts clearly

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concluded that it would not serve this purpose, and impounded it, saying that the court did not consider the police record in reaching a conclusion on the merits (R. 203). The Court of Appeals held that the district court was in error in not considering the record, considered it itself, and concluded that it was not enough to sustain the claim of privilege (R. 214-216).

appear in the opinion below. It is respectfully suggested that if this Court should consider that the court below erred in the application of the law to the particular facts, this is an appropriate case to grant certiorari and reverse without further briefing or argument.

Respectfuly submitted,

PHILIP B. PERLMAN,

Solicitor General

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IN THE

Supreme Court of the United States

October Term, 1951.

No. 666.

JAMES SINGLETON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITIONER'S REPLY MEMORANDUM.

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Supreme Court of the United States.

OCTOBER TERM, 1951.

No. 666.

JAMES SINGLETON,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITIONER'S REPLY MEMORANDUM.

The Memorandum for the United States relies upon the opinion of the court below. That opinion was clearly in error because the principles of law recited therein and their application to the facts of the instant case were based upon the same court's erroneous interpretation in the predecessor *Greenberg* case, the judgment and sentence of which was reversed by this Court without opinion (*Greenberg v. United States,* O. T. 1951, No. 461, April 7, 1952).

In this case, as in the *Hoffman* (341 U. S. 479) and *Greenberg* cases, the Court of Appeals for the Third Circuit failed to apply the constitutional privilege against self-incrimination in accordance with the decisions of this Court. We respectfully submit that far from being "a long step removed" (U. S. Memo. p. 5), the instant case is strikingly similar on its facts to both the *Hoffman* and *Greenberg* cases. Its similarity to the *Hoffman* case has been previously recited in petitioner's brief (p. 17), and remains unrefuted.

As to the *Greenberg* case: In that case, the witness, after having been asked whether he knew "any numbers

writers around his residence" answered yes, and then when asked the following question, "Who?" refused to answer, reciting his claim of privilege against self-incrimination. During the oral argument before this Court, counsel for Greenberg argued that the answer to that question would force Greenberg to disclose witnesses against himself, would tend further to disclose that he was involved in a conspiracy, and in an income producing business, an important requisite link in the chain of evidence necessary for the Government to prosecute successfully a violation of the income tax laws based upon understatement of income.[1] This claim of privilege was held justified by this Court.

The Government attempted to achieve exactly the same result in the instant case, with a change in technique. Instead of asking petitioner whether he knew any numbers writers in the vicinity of his residence, and then asking him to name them (as was done in Greenberg), here petitioner was asked in the first instance to identify and describe his association with three named individuals, one his nephew residing with him, and the other two whom he had known for twelve years, and with a member of whose family he had previously been jointly arrested; and then petitioner was asked what business each of them were in. The Government's objective was identical in both the *Greenberg* and the instant case; the order of the questions was merely reversed.

The arguments advanced on behalf of Greenberg apply with even greater force on behalf of petitioner, in view of the long history of his prior criminal conduct which is part of this record, and in view of the Government's admission, by asking for bail in the sum of $25,000 merely for petitioner's appearance as a witness to give testimony before

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1. Prior to the termination of its session, this special grand jury did indict eighteen individuals for violation of income tax laws; and at least seven of those indicted had been previously subpoenaed and questioned by the same special grand jury.

the special grand jury (Petition p. 2), that testimony by petitioner would be materially helpful in the prosecution of its inquiry into violation of Federal offenses.

The court below in commenting upon the evidence in the instant case said that it "indicate(s) clearly that the defendant is reputed to be involved in the 'numbers racket' "; and then the court added—"a purely local offense", obviously holding that the disclosure of such conduct would not sustain the claim of privilege here asserted. Under similar circumstances this court has held to the contrary in the *Greenberg* case where it sustained the claim of privilege against self-incrimination in refusing to answer the question, "Are you in the numbers business now?"

Furthermore, under the circumstances here present the instant questions may be presumed to be material and the answers to be in furtherance of the Government's objective to inquire into and indict for violation of Federal criminal statutes; therefore, knowledge on the part of petitioner of the nature of those unlawful federal activities of the persons concerning whom he was questioned, is in itself relevant to establish his connection with those individuals. This knowledge on the part of petitioner, if disclosed, plus the facts in the record of his relationship with these individuals, together with the "reports" and "statements" already known to the Government (R. 173) of their being seen together or being connected,[2] would clearly establish

2. The trial judge refused to permit petitioner definitely to establish this association or connection between these individuals and himself. He upheld the Government's objection to a question asking for a direct and definitive answer on that subject, as follows:

"Do you have reason to believe that there is any connection between these three men and Mr. Singleton?

MR. O'KEEFE: I object to that question.

THE COURT: Objection sustained.

MR. SCHOFIELD: Your Honor will grant me an exception to that?

THE COURT: Yes." (R. 172)

petitioner as a partner or co-conspirator with those individuals. As did Hoffman and Greenberg, petitioner in turn reasonably sensed "the peril of prosecution for Federal offenses ranging from [income tax violations] to conspiracy". *Hoffman*, at p. 488.

The Government advanced no answer to any of the other four reasons asserted in the petition for certiorari (Petition, pp. 10-13). No comment therefore is required in further support of those reasons and the argument previously advanced. However, after the instant petition was filed, this Court allowed certiorari in a case involving an identical issue with one here asserted (Petition, p. 11), namely, the extent of the Government's privilege against disclosing information or documents in its possession. In that case, *Reynolds v. United States*, the trial judge overruled the Government's claim of privilege against disclosing information or documents to plaintiff in a civil suit under the Federal Tort Claims Act. Despite that ruling, the Government refused to produce the evidence directed. The trial judge thereupon ruled the issue of fact in plaintiff's favor and after hearing evidence as to the amount of damage entered judgment for plaintiff against the United States. The judgment was affirmed by the Court of Appeals for the Third Circuit, with the same court presiding as presided in the instant case.

In upholding the trial judge's ruling, that court said:

> "It has been held that in *criminal* cases *the Government has the choice either to reveal all evidence within its control which bears upon the charges or let the offense go unpunished,* at least where the evidence is held by officials who are themselves charged with the administration of those laws for the violation of which the accused has been indicted.[16] We think that the Federal Tort Claims Act offers the Government an analogous choice in tort claims cases." (Emphasis supplied; 192 F. 2d 987, 995.)

In enunciating that principle in a civil case, the court below recognized and asserted as the law in criminal cases decisions of the Court of Appeals for the Second Circuit and held the situation to be analogous in civil cases; then surprisingly the same court almost simultaneously refused to follow those very same decisions [3] and its own holding in the instant *criminal* proceeding. This Court granted certiorari in the *Reynolds* case on April 7, 1952, 20 L. W. 3263.

For the reasons set out in the petition for certiorari and brief in support thereof, and for the foregoing additional reasons, the judgment below should be reversed and petitioner joins with the Government in concluding that "this is an appropriate case to grant certiorari and reverse without further briefing or argument" (U. S. Memo. p. 6).

Respectfully submitted,

LEMUEL B. SCHOFIELD,
MARVIN COMISKY,
Attorneys for Petitioner.

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3. In footnote 16, 192 F. 2d 987, 995, the Court of Appeals for the Third Circuit cited the following cases:

"United States v. Andolschek, 2 Cir., 1944, 142 F. 2d 503; United States v. Krulewitch, 2 Cir., 1944, 145 F. 2d 76, 156 A. L. R. 337; United States v. Beekman, 2 Cir., 1946, 155 F. 2d 580, 584; United States v. Grayson, 2 Cir., 1948, 166 F. 2d 863."

Except for the Krulewitch case, the other cases were cited to the same court in the instant case and are set forth in the petition and brief in support thereof (Petition, p. 11; Brief, pp. 19-20).